

**Proposed Amendments to the Rules of the High Court (Cap. 4A)  
relating to the Competition Tribunal Rules in Marked-up Mode**

**Order 59 Appeals to the Court of Appeal**

**1. Application of Order to appeals (O. 59, r. 1)**

- (1) This Order applies, subject to the provisions of these rules with respect to particular appeals, to every appeal to the Court of Appeal (including so far as it is applicable thereto, any appeal to that Court from a master or other officer of the High Court or from any tribunal from which an appeal lies to that Court under or by virtue of any enactment) not being an appeal for which other provision is made by these rules and references to "the court below" apply to any Court, tribunal or person from which such appeal lies.
- (2) For the avoidance of doubt and without prejudice to the generality of paragraph (1), this Order, unless the context otherwise requires, applies in relation to an appeal to the Court of Appeal from the District Court or Competition Tribunal.

**2. Application of Order to applications for new trial (O. 59, r. 2)**

This Order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 11 (1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

**GENERAL PROVISIONS AS TO APPEALS**

**2A. Application to Court of Appeal for leave to appeal (O. 59, r. 2A)**

- (1) An application to the Court of Appeal for leave to appeal must be made by a summons supported by a statement setting out-
  - (a) the reasons why leave should be granted; and

- (b) if the time for appealing has expired, the reasons why the application was not made within that time.
- (2) An application under paragraph (1) must be made inter partes if the proceedings in the court below are inter partes.
- (3) An application under paragraph (1) must include, where necessary, an application to extend the time for appealing.
- (4) A party who intends to resist an application under paragraph (1) made inter partes shall, within 14 days after the application is served on him, file in the Court of Appeal and serve on the applicant a statement as to why the application should not be granted.
- (5) The Court of Appeal may-
  - (a) determine the application without a hearing on the basis of written submissions only; or
  - (b) direct that the application be heard at an oral hearing,and in both cases, the Court of Appeal may give such directions as it thinks fit in relation to the application.
- (6) Where the Court of Appeal grants the application, it may impose such terms as it thinks fit.
- (7) Subject to paragraph (8), if the application is determined on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after he has been given notice of the determination, request the Court of Appeal to reconsider the determination at an oral hearing inter partes.
- (8) Where the Court of Appeal determines the application on the basis of written submissions only, it may, if it considers that the application is totally without merit, make an order that no party may under paragraph (7) request the determination to be reconsidered at an oral hearing inter partes.
- (9) An oral hearing held pursuant to a request under paragraph (7) may be before the Court of Appeal consisting of-
  - (a) the Justice of Appeal; or
  - (b) one or more of the Justices of Appeal,who have determined the application on the basis of written submissions only.

**2B. Application for leave to appeal against interlocutory and other judgments or orders of Court (O. 59, r. 2B)**

- (1) Subject to paragraph (4) and any other enactment, an application for leave to appeal against-
  - (a) an interlocutory judgment or order of the Court;
  - (b) a judgment or order of the Court specified in section 14(3)(e) or (f) of the Ordinance; or
  - (c) any other judgment or order of the Court against which an appeal may be made with leave of the Court or the Court of Appeal,may only be made to the Court in the first instance within 14 days from the date of the judgment or order.
- (2) So far as is practicable, the application must be made to the judge or master against whose judgment or order leave to appeal is sought.
- (3) Where the Court refuses the application, a further application for leave to appeal may be made to the Court of Appeal within 14 days from the date of the refusal.
- (4) If the Court of Appeal allows, the application may be made direct to the Court of Appeal within 14 days from the date of the judgment or order.
- (5) An application under this rule must be made inter partes if the proceedings to which the judgment or order relates are inter partes.

**2BA. Application for leave to appeal against interlocutory orders, etc. of Competition Tribunal (O. 59, r. 2BA)**

- (1) If the Competition Tribunal refuses an application for leave to appeal against an interlocutory decision, determination or order of the member or members of the Tribunal under rule 45 of the Competition Tribunal Rules (Cap. 619 sub. leg. [ ]), another application for leave to appeal may be made to the Court of Appeal within 14 days from the date of the refusal.
- (2) If the Court of Appeal allows, the application for leave mentioned in paragraph (1) may be made direct to the Court of Appeal within 14 days from the date of the interlocutory decision, determination or order.

## **2C. Refusal by single judge of application for leave to appeal (O. 59, r. 2C)**

- (1) Notwithstanding rule 2A(8), where an application for leave to appeal made under rule 2A(1) ~~or 2B(3)~~, 2B(3) or 2BA(1) is determined (with or without a hearing) by a single Justice of Appeal, a party aggrieved by the determination may, within 7 days from the date of the refusal, make a fresh application to the Court of Appeal.
- (2) The party is entitled to have the fresh application determined by the Court of Appeal consisting of 2 Justices of Appeal.
- (3) The Justice of Appeal who has previously determined the application may sit in the Court of Appeal determining the fresh application.

## **3. Notice of appeal (O. 59, r. 3)**

- (1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by motion, and the notice of the motion is referred to in this Order as "notice of appeal".
- (2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.
- (3) Except with the leave of the Court of Appeal or a single judge, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal.
- (5) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall not be necessary to serve the notice on parties not so affected.
- (6) No notice of appeal shall be given by a respondent in a case to which rule 6(1) relates.

#### **4. Time for appealing (O. 59, r. 4)**

- (1) Except as otherwise provided by these rules, a notice of appeal must be served under rule 3(5) within-
  - (a) in the case where leave to appeal to the Court of Appeal is required under section 14AA (not being a case to which sub-paragraph (b) applies) or section 14(3)(e) or (f) of the Ordinance, 7 days after the date on which leave to appeal is granted;
  - (b) in the case of an appeal from a judgment, order or decision given or made in the matter of the winding up of a company, or in the matter of any bankruptcy, 28 days from the date of the judgment, order or decision; and
  - (c) in any other case, 28 days from the date of the judgment, order or decision concerned.
  
- (2) In the case where an appeal may lie from a judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance (Cap 484), the following period of time shall be disregarded in determining the period referred to in paragraph (1)-
  - (a) where an application has been made under section 27C of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined; or
  - (b) where an application has been made under section 27D of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined.
  
- (3) (Repealed L.N. 152 of 2008)
  
- (4) In relation to an appeal from the District Court, a notice of appeal must be served under rule 3(5) within-
  - (a) in the case where leave to appeal to the Court of Appeal is required under section 63(1) or (1B) of the District Court Ordinance (Cap 336), 7 days after the date on which leave to appeal is granted; and
  - (b) in the case of an appeal from an order specified in section 63(3) of the District Court Ordinance (Cap 336) or an order for imprisonment given or made under Order 49B of the Rules of the District Court (Cap 336 sub. leg. H), 28 days after the date on which the order is made.

- (5) In relation to an appeal from the Competition Tribunal or the Registrar of the Tribunal under the Competition Ordinance (Cap. 619), a notice of appeal must be served under rule 3(5) within—
- (a) if leave to appeal to the Court of Appeal is required under sections 154(2)(c) and 155(1) of that Ordinance, 7 days after the date on which leave to appeal is granted; and
- (b) if an appeal lies as of right against—
- (i) any decision, determination or order of the Tribunal under section 154(1) of that Ordinance;
- (ii) any interlocutory decision, determination or order of the Tribunal under section 155(2) of that Ordinance; or
- (iii) any decision, determination or order of the Registrar of the Tribunal under rule 43 of the Competition Tribunal Rules, 28 days after the date on which the decision, determination or order is made.

[O.59, r.5 to r.21 remain unchanged.]

## **Order 78 District Court Proceedings transferred or removed to Court of First Instance**

### **1. Application and interpretation (O. 78, r. 1)**

- (1) This Order applies where an order has been made under section 41 or 42 of the District Court Ordinance (Cap 336), for the transfer, or under section 15 of the Crown Proceedings Ordinance (Cap 300), for the removal, of proceedings from the District Court to the Court of First Instance.
- (2) Where only the proceedings on a counterclaim are transferred, this Order shall apply as if the party setting up the counterclaim were the plaintiff and the party resisting it the defendant, and references in this Order to the plaintiff and the defendant shall be construed accordingly.
- (3) References in the following provisions of this Order to the plaintiff and the defendant shall, in relation to proceedings begun in the District Court otherwise than by writ, be construed as references to the applicant and the respondent respectively.

## **2. Duties of officer (O. 78, r. 2)**

On receipt by the Registrar of the documents relating to the transfer or removal, the Registrar must forthwith- (L.N. 356 of 1988; L.N. 152 of 2008)

- (a) file the said documents and make an entry of the filing thereof in the cause book,
- (c) give notice to all parties to the proceedings in the District Court that the action is proceeding in the Court of First Instance and that the defendant is required to acknowledge service of the notice in writing.

## **3. Acknowledgment of service (O. 78, r. 3)**

- (1) The defendant must, within 7 days after receipt of the notice referred to in rule 2, acknowledge service in writing of the notice of transfer or removal.
- (2) Where the defendant has not, before the proceedings are transferred or removed to the Court, acknowledged service of the writ or the originating summons by which the proceedings were begun in the District Court, he shall file an acknowledgement of service in accordance with Order 12, rules 1, 3, 5 and 9 within 14 days after receipt of the notice referred to in rule 2.

## **4. Judgment on failure to give notice of intention to defend (O. 78, r. 4)**

- (1) If the defendant fails, or all the defendants (if more than one) fail, to give notice of intention to defend within the period prescribed by rule 3(2), the plaintiff, after having caused an address for service to be entered in the cause book, may, with the leave of the Court, enter judgment against the defendant or defendants, as the case may be, with costs.
- (2) An application for leave under this rule must be made by summons which must, notwithstanding anything in Order 65, rule 9, be served on the defendant, and the address for service of the defendant shall be his address for service in the proceedings in the District Court.

## **5. Case management summons or summary judgment (O. 78, r. 5)**

- (1) Unless the plaintiff has entered judgment against a defendant under rule 4(1) or has entered judgment (final or interlocutory) or applied for judgment against a defendant under Order 19, the plaintiff must, within 7 days after a notice under rule 2 is given, cause an address for service to be entered in the cause book and either-
  - (a) take out and serve on the defendant a case management summons returnable in not less than 21 days, or
  - (b) except where the defendant is the Crown, make an application under Order 14, rule 1, for judgment against the defendant;and where a summons is served on the defendant under sub-paragraph (a) Order 25, rules 2 to 7, shall, with any necessary modifications, apply as if that summons were a case management summons under that Order.
- (2) If the plaintiff fails either to take out such a summons, or make such an application, as is referred to in paragraph (1) within the period prescribed thereby the defendant or any defendant may take out such a summons or may apply for an order dismissing the action.
- (3) On the hearing of an application to dismiss the action the Court may either dismiss the action on such terms as may be just or may deal with the application as if it were a case management summons.

### **Order 78A**

### **Transfer of Proceedings from Court of First Instance to Competition Tribunal under Competition Ordinance**

#### **1. Interpretation of this Order (O. 78A, r. 1)**

In this Order—

transfer order (移交令) means an order made by the Court for the transfer of proceedings from the Court to the Competition Tribunal under section 113 of the Competition Ordinance (Cap. 619).



**2. Transfer of proceedings from Court to Competition Tribunal (O. 78A, r. 2)**

- (1) A transfer order may be made by the Court either of its own motion or on application of a party.
- (2) The application must be made by filing a summons setting out the scope of the proceedings, or the part of the proceedings, to be transferred to the Competition Tribunal.

**3. Duties of Registrar of the High Court after transfer of proceedings from Court to Competition Tribunal (O. 78A, r. 3)**

If the Court has made a transfer order, the Registrar of the High Court must, as soon as practicable after the transfer order has been sealed, send to the Registrar of the Competition Tribunal—

- (a) all documents issued out of, or filed or lodged in, the Court in the proceedings transferred by the transfer order;
- (b) any notes of the proceedings made by a judge of the Court or the Registrar or master of the High Court; and
- (c) any transcripts or other records of the proceedings.

**4. Proceedings transferred from Court to Competition Tribunal: effects of transfer (O. 78A, r. 4)**

- (1) On making a transfer order, the Court may give further directions as to the transfer of suitors' fund to the Competition Tribunal.
- (2) The making of a transfer order does not affect—
  - (a) any right of appeal to the Court or the Court of Appeal against—
    - (i) the transfer order itself; or
    - (ii) any judgment, decision, determination or order made by the Court in the proceedings before the transfer order was made; or
  - (b) the right to enforce in the Court any judgment, decision, determination or order made by the Court before the transfer.

**Order 78B**  
**Transfer of Proceedings from Competition Tribunal to Court of First Instance under Competition Ordinance**

**1. Interpretation of this Order (O. 78B, r. 1)**

In this Order—

transfer order (移交令) means an order made by the Competition Tribunal for the transfer of proceedings from the Tribunal to the Court under section 114 of the Competition Ordinance (Cap. 619).

**2. Procedures after transfer of proceedings from Competition Tribunal to Court (O. 78B, r. 2)**

- (1) The Registrar of the High Court must, as soon as practicable after the receipt of the documents sent under rule 48 of the Competition Tribunal Rules (Cap. 619 sub. leg.[ ] ) in relation to a transfer order—

  - (a) give notice of the transfer and the receipt of the documents to—

    - (i) all the parties to the proceedings transferred by the transfer order;
    - (ii) the Competition Commission; and
    - (iii) the Communications Authority if it performs the functions of the Commission under section 159 of the Competition Ordinance (Cap. 619); and
  - (b) appoint a date for a hearing before the Court for giving directions as to the further conduct of the proceedings.
- (2) A party must, within 14 days after the receipt of the notice given under paragraph (1)(a), in writing acknowledge receipt of the notice.
- (3) At the hearing mentioned in paragraph (1)(b), the Court may give any directions as to the further conduct of the proceedings, including the procedures to be adopted in the proceedings.

**3. Proceedings transferred from Competition Tribunal to Court: effects of transfer (O. 78B, r. 3)**

- (1) Proceedings transferred by a transfer order are regarded as having been transferred to the Court on the date on which the order is made, unless the Court otherwise directs.
- (2) On the transfer of the proceedings—

  - (a) a document issued, served, filed or lodged on a date in relation to the proceedings before the transfer is regarded as having been issued, served, filed or lodged, as may be applicable, on that date for the purpose of the proceedings in the Court; and
  - (b) a step taken by a party on a date in relation to the proceedings before the transfer is regarded as having been taken on that date for the purpose of the proceedings in the Court.
- (3) On the transfer of the proceedings, a judgment, decision, determination or order made by the Competition Tribunal in relation to the proceedings before the transfer has effect in the Court as if the judgment, decision, determination or order had been made by the Court on the date on which it was made in the Tribunal, unless the Court otherwise directs.
- (4) The transfer of the proceedings does not affect—

  - (a) any right of appeal to the Competition Tribunal or the Court of Appeal against—

    - (i) the transfer order itself; or
    - (ii) any judgment, decision, determination or order made by the Tribunal in the proceedings before the transfer; or
  - (b) the right to enforce in the Tribunal any judgment, decision, determination or order made by the Tribunal before the transfer.
- (5) If, before the transfer of the proceedings, an application had been made to the Competition Tribunal in relation to the proceedings but not yet been determined, the application is regarded as having been made to the Court and to be dealt with by the Court accordingly.
- (6) If the application referred to in paragraph (5) is part-heard in the Competition Tribunal, the Court may either—

- (a) continue to hear the application as if the earlier proceedings relating to the application had taken place before the Court; or
- (b) require the application to be heard afresh.